

1 MORGAN, LEWIS & BOCKIUS LLP  
 2 Stephen Scotch-Marmo (admitted *pro hac vice*), stephen.scotch-marmo@morganlewis.com  
 3 Michael James Ableson (admitted *pro hac vice*), michael.ableson@morganlewis.com  
 4 101 Park Avenue  
 5 New York, NY 10178  
 6 Telephone: (212) 309-6000; Facsimile: (212) 309-6001

7 AMERICAN CIVIL LIBERTIES UNION  
 8 FOUNDATION OF NORTHERN CALIFORNIA  
 9 Linda Lye (SBN 215584), llye@aclunc.org  
 10 Julia Harumi Mass (SBN 189649), jmass@aclunc.org  
 11 39 Drumm Street  
 12 San Francisco, CA 94111  
 13 Telephone: (415) 621-2493; Facsimile: (415) 255-8437

14 ASIAN AMERICANS ADVANCING  
 15 JUSTICE - ASIAN LAW CAUCUS  
 16 Nasrina Bargzie (SBN 238917), nasrinab@advancingjustice-alc.org  
 17 Yaman Salahi (SBN 288752), yamans@advancingjustice-alc.org  
 18 55 Columbus Avenue  
 19 San Francisco, CA 94111  
 20 Telephone: (415) 848-7711; Facsimile: (415) 896-1702

21 *Attorneys for Plaintiffs*

22 Additional counsel listed on signature page of Plaintiffs' special motion

23 **UNITED STATES DISTRICT COURT  
 24 NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION**

25 WILEY GILL; JAMES PRIGOFF; TARIQ  
 26 RAZAK; KHALID IBRAHIM; and AARON  
 27 CONKLIN,

28 Plaintiffs,

v.

29 DEPARTMENT OF JUSTICE; LORETTA  
 30 LYNCH,<sup>1</sup> in her official capacity as the  
 31 Attorney General of the United States;  
 32 PROGRAM MANAGER – INFORMATION  
 33 SHARING ENVIRONMENT;  
 34 KSHEMENDRA PAUL, in his official  
 35 capacity as the Program Manager of the  
 36 Information Sharing Environment,

37 Defendants.

38 Case No. 3:14-cv-03120 (RS)

39 **STIPULATION AND [PROPOSED]  
 40 ORDER SETTING HEARING DATE  
 41 AND BRIEFING SCHEDULE FOR  
 42 PLAINTIFFS' SPECIAL MOTION TO  
 43 ESTABLISH RIGHT TO DISCOVERY  
 44 ON THE DEPARTMENT OF  
 45 JUSTICE'S STANDARD FOR  
 46 SUSPICIOUS ACTIVITY REPORTING  
 47 AND SUBMISSION OF  
 48 ADMINISTRATIVE RECORD  
 49 REGARDING FUNCTIONAL  
 50 STANDARD**

51 <sup>1</sup> In light of Ms. Lynch's swearing in as Attorney General on April 27, 2015, she is automatically  
 52 substituted as a Defendant in this action in place of Eric Holder. *See* Fed. R. Civ. P. 25(d).

53 **STIPULATION AND [PROPOSED] ORDER  
 54 SETTING HEARING DATE AND  
 55 BRIEFING SCHEDULE FOR PLAINTIFFS'  
 56 SPECIAL MOTION AND SUBMISSION OF  
 57 ADMINISTRATIVE RECORD REGARDING  
 58 FUNCTIONAL STANDARD**

59 3:14-CV-03120 (RS)

## RECITALS

1. On October 16, 2014, Defendants filed a motion to dismiss Plaintiffs' complaint (ECF No. 21), which the Court denied on February 20, 2015 (ECF No. 38).

2. On March 12, 2015, the Court held a case management conference. (ECF No. 41.)

3. At the conference, the Court ordered Defendants to provide an administrative record for Defendant Program Manager of the Information Sharing Environment's ("Program Manager") standard on suspicious activity reporting by June 10, 2015. (ECF No. 41.)

4. The parties disagreed regarding the availability of discovery on Plaintiffs' claims related to Defendant Department of Justice's ("DOJ") alleged standard on suspicious activity reporting. Plaintiffs argued that immediate discovery on the DOJ's standard on suspicious activity reporting is appropriate and necessary. Defendants contend that discovery is inappropriate in this Administrative Procedure Act action, which is governed by the administrative record. With respect to the so-called DOJ standard, Defendants further contend that Plaintiffs have failed to plead facts sufficient to establish the existence of such a standard or a cause of action that would warrant discovery. The Court invited Plaintiffs to address the dispute between the parties via an affirmative motion setting forth Plaintiffs' position as to their right to obtain discovery related to the DOJ's standard for suspicious activity reporting. Pursuant to the Court's invitation, Plaintiffs intend to file a special motion to establish their right to discovery on the DOJ's standard for suspicious activity reporting ("Special Motion").

5. To ensure orderly briefing on Plaintiffs' Special Motion, the parties stipulate to the following briefing schedule. On June 4, 2015, Plaintiffs will file their Special Motion. On July 10, 2015, Defendants will file their opposition to Plaintiffs' Special Motion. Plaintiffs will then file a reply brief in support of their Special Motion on July 30, 2015.

6. The parties additionally stipulate that the hearing on Plaintiffs' Special Motion will be held on August 20, 2015, subject to the Court's approval.

7. The parties further stipulate that Defendants will be permitted until June 17, 2015,

STIPULATION AND [PROPOSED] ORDER  
SETTING HEARING DATE AND  
BRIEFING SCHEDULE FOR PLAINTIFFS'  
SPECIAL MOTION AND SUBMISSION OF  
ADMINISTRATIVE RECORD REGARDING  
FUNCTIONAL STANDARD  
3:14-CV-02120 (RS)

1 to file the administrative record pertaining to the Program Manager's functional standard, subject  
 2 to the Court's approval. Defendants request an additional week to ensure proper review of the  
 3 record.

4 **STIPULATION**

5 Plaintiffs will file their Special Motion on June 4, 2015. Defendants will file their  
 6 opposition to Plaintiffs' Special Motion on July 10, 2015. Plaintiffs will then file a reply brief in  
 7 support of their Special Motion on July 30, 2015. Plaintiffs' Special Motion will be heard on  
 8 August 20, 2015, subject to the Court's approval. Defendants will file the administrative record  
 9 pertaining to the Program Manager's functional standard on or before June 17, 2015.

10

11 Dated: June 4, 2015

12 AMERICAN CIVIL LIBERTIES UNION  
 FOUNDATION OF NORTHERN  
 CALIFORNIA

13

By /s/ Julia Harumi Mass  
 14 JULIA HARUMI MASS

15

Attorneys for Plaintiffs

16

Dated: June 4, 2015

U.S. DEPARTMENT OF JUSTICE

17

By /s/ Paul Freeborne  
 18 Paul Freeborne

19

Attorneys for Defendants

20

21

22

23

24

25

26

27

28

STIPULATION AND [PROPOSED] ORDER  
 SETTING HEARING DATE AND  
 BRIEFING SCHEDULE FOR PLAINTIFFS'  
 SPECIAL MOTION AND SUBMISSION OF  
 ADMINISTRATIVE RECORD REGARDING  
 FUNCTIONAL STANDARD  
 3:14-CV-03120 (RS)

## **FILER'S ATTESTATION**

I, Nicole R. Sadler, am the ECF user whose identification and password are being used to file this STIPULATION AND [PROPOSED] ORDER SETTING HEARING DATE AND BRIEFING SCHEDULE FOR PLAINTIFFS' SPECIAL MOTION TO ESTABLISH RIGHT TO DISCOVERY ON THE DEPARTMENT OF JUSTICE'S STANDARD FOR SUSPICIOUS ACTIVITY REPORTING AND SUBMISSION OF ADMINISTRATIVE RECORD REGARDING FUNCTIONAL STANDARD. Pursuant to L.R. 5-1(i)(3), I hereby attest that concurrence in the electronic filing of this document has been obtained from each of the other signatories.

Dated: June 4, 2015

By */s/Nicole R. Sadler*  
Nicole R. Sadler

STIPULATION AND [PROPOSED] ORDER  
SETTING HEARING DATE AND  
BRIEFING SCHEDULE FOR PLAINTIFFS'  
SPECIAL MOTION AND SUBMISSION OF  
ADMINISTRATIVE RECORD REGARDING  
FUNCTIONAL STANDARD  
3:14-CV-03120 (RS)

## **[PROPOSED] ORDER**

Pursuant to the Stipulation between the Parties, it is hereby ORDERED that Plaintiffs' Special Motion to Establish Right to Discovery on the Department of Justice's Standard for Suspicious Activity Reporting is set for hearing on August 20, 2015, at 1:30 p.m.

Further pursuant to the Stipulation, it is hereby ORDERED that Plaintiffs' Special Motion shall be filed no later than June 4, 2015; the opposition to the motion shall be filed no later than July 10, 2015; and the reply shall be filed no later than July 30, 2015. Defendants will file the administrative record pertaining to the Program Manager's functional standard on or before June 17, 2015.

## IT IS SO ORDERED.

Dated: \_\_\_\_\_

The Hon. Richard Seeborg  
Judge of the United States District Court for  
the Northern District of California